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July 17, 2001

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Common Carrier Bureau
Network Services Division
Office of the Chief

BY HAND DELIVERY

CC DOCKET: 99-200

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

NSD-L-01-141

Re: Petition for Waiver of Numbering Resource Utilization of Threshold
Request for Confidentiality of Petition and Declaration

Dear Ms. Salas:

Leap Wireless International, Inc., on behalf of itself and its subsidiaries (collectively, "*Leap*"), hereby respectfully submits the attached petition for waiver of Section 52.15(h) of the Commission's Rules requiring a 60% numbering resource utilization threshold ("*Petition*"). Leap also requests that the Commission order the North American Numbering Plan Administrator to assign Leap three growth codes in each of the 602 and 480 Numbering Plan Areas

Leap has included a redacted version of the Petition for public viewing. A non-redacted version of the Petition and the declaration of Matthew P. Stoiber and chart appended thereto (collectively, "*Declaration*") are being filed in a sealed envelope with a copy of this letter and have been omitted from service copies of the filing. The non-redacted Petition and Declaration have each been marked "CONFIDENTIAL BUSINESS INFORMATION." Leap asks the Commission to treat the non-redacted Petition and the Declaration as confidential under Section 0.459 of the Commission's Rules. The information contained in the Petition and Declaration falls within exemption four of the Freedom of Information Act, 5 U.S.C. § 552(b).

The non-redacted Petition and Declaration contains confidential business information that, if disclosed, would cause substantial injury to Leap's competitive position in Phoenix, Arizona and in markets where Leap intends to launch service. Specifically, the non-redacted Petition and Declaration contains information regarding preparations for launch in Phoenix and Leap's forecast of market penetration in that market as well as historical penetration rates in markets across the nation where Leap has previously launched service. If made public, this information would be valuable to Leap's competitors in seeking to counter Leap's operations

Ms. Magalie Roman Salas

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in Phoenix and in markets where Leap intends to launch service at a future date. In the event that this confidentiality request is denied, Leap requests notification and immediate return of the envelope, as provided for in Section 0.459(e) of the Commission's Rules.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. H. Barker", with a long horizontal flourish extending to the right.

James H. Barker

William S. Carnell

Matthew R. VanderGoot

of LATHAM & WATKINS

Its Attorneys

Enclosures

cc: Attached Service List

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2001, I sent by hand delivery a copy of the foregoing Petition for Waiver of Numbering Resource Utilization Threshold and Allocation of Numbering Resources to the following:

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Matthew R. VanderGoot

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Common Carrier Bureau
Network Services Division
Office of the Chief

In the Matter of)
)
Leap Wireless International, Inc.)
Request for Waiver of Numbering)
Resource Utilization Threshold)
Requirement of Commission)
Rule 52.15(h))

File No. **NSD-L-01-141**

CC DOCKET: 99-200

PETITION FOR WAIVER OF NUMBERING RESOURCE UTILIZATION
THRESHOLD AND ALLOCATION OF NUMBERING RESOURCES
EXPEDITED ACTION REQUESTED¹

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Filed: July 17, 2001

¹ Leap respectfully requests that the Commission direct the North American Numbering Plan Administrator to assign Leap the requested growth codes by August 3, 2001. Action by this date will ensure that Leap receives additional growth codes prior to the exhaustion of its initial allocation of numbering resources.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Leap Wireless International, Inc.)	File No.
Request for Waiver of Numbering)	
Resource Utilization Threshold)	
Requirement of Commission)	
Rule 52.15(h))	

**PETITION FOR WAIVER OF NUMBERING RESOURCE UTILIZATION
THRESHOLD AND ALLOCATION OF NUMBERING RESOURCES
EXPEDITED ACTION REQUESTED**

Leap Wireless International, Inc., on behalf of itself and its subsidiaries (collectively, "*Leap*"), pursuant to Section 1.925 of the Commission's Rules,² respectfully requests a waiver of Section 52.15(h) of the Commission's Rules,³ to allow Leap to obtain additional central office codes in the Phoenix rate center without meeting the 60% threshold for numbering resource utilization. Leap specifically requests three growth codes in the 602 Numbering Plan Area ("*NPA*") and three growth codes in the 480 NPA. In order to receive expedited relief from its impending exhaustion of numbering resources, Leap also respectfully requests that the Commission direct the North American Numbering Plan Administrator ("*NANPA*") to assign to Leap the requested growth codes by August 3, 2001.

² 47 C.F.R. § 1.925.

I. SUMMARY

Leap has an initial allocation of 90,000 numbering resources in the Phoenix Basic Trading Area (“*BTA*”) (30,000 in each of the 602, 480 and 623 NPAs) and intends to commence service in the very near future in the Phoenix rate center.⁴ However, growth forecasts indicate that Leap will deplete its remaining inventory of numbering resources soon after reaching 60% utilization and thereby will be prevented from offering its service to new customers until additional numbering resources are received. Nevertheless, NANPA has rejected Leap’s requests for additional growth codes on the grounds that Leap has not met the utilization threshold.⁵ This is the case despite Leap’s projections of rapid growth that will quickly overwhelm its initial allocation of numbers across the Phoenix rate center.⁶ For the reasons set forth below, a waiver of the utilization threshold in this instance will greatly serve the public interest and will also prevent an inequitable and unduly burdensome application of the rule that would frustrate the Commission’s objective of allowing a carrier with a verifiable need to obtain the numbering resources necessary to serve customers in the Phoenix market.

II. BACKGROUND

Leap and its subsidiaries are Entrepreneurs’ Block PCS licensees with an innovative wireless service model that has proven extraordinarily popular with consumers.

³ 47 C.F.R. § 52.15(h).

⁴ See *Declaration* ¶ 2.

⁵ A copy of Leap’s Growth Code Request and the Administrator’s Response is provided as Attachment A.

⁶ The Commission has recognized that carriers cannot reasonably be expected to achieve significant utilization levels immediately in newly-acquired numbering resources. See *First Report and Order*, 15 FCC Rcd at 7619 ¶ 111. For this reason, carriers are given a 90-day grace period following the date new numbering resources are activated in the LERG before those numbers are included in the utilization calculation. See 47 C.F.R. § 52.15(g)(3)(B)(ii). In Leap’s case, the 90-day grace period has passed for the 30,000 of its 90,000 numbering resources. Therefore, the denominator of the utilization calculation is 30,000. However, Leap has yet to commence service so it must put a zero in the numerator of the utilization calculation. Since NANPA will only allocate growth codes where the utilization calculation produces a quotient equal to at least 60%, Leap’s only option to obtain the additional growth resources it needs is this petition for wavier of the utilization threshold.

Leap's Cricket model offers consumers flat-rate wireless service for about \$30 per month for unlimited local airtime, and has met with outstanding success in each market in which it has been introduced. The key to Cricket's success is the simplicity of its offering: the service is marketed as "Comfortable WirelessSM," and Cricket customers enjoy full and innovative mobile services where they live, work, and play, for a price comparable to traditional wireline service. Leap is committed to bringing Cricket's unique combination of advanced wireless communications services to new markets across the country.

Under the recently implemented numbering utilization threshold,⁷ in order to apply for additional growth codes, a carrier must wait until 60% of its existing inventory of numbering resources has been assigned to customers.⁸ This is true even if a carrier anticipates high consumer demand for its service that would rapidly overtake its initial allocation of numbering resources. The problem with this requirement is that in situations such as this one, even if a carrier facing high consumer demand applies for growth codes after immediately upon reaching the 60% threshold, that carrier may prematurely exhaust its initial allocation of numbering resources because of the amount of time necessary to receive additional central office codes following the application date. As the Commission is aware, normally an applicant must request an "effective date" for code activation at least 66 days after the submission of the request to NANPA.⁹ In effect then, a carrier must have an inventory of numbering resources equal to at least 66 days of consumer demand at the time it applies for additional growth codes in order to avoid running out of numbers and interrupting its offer of service to consumers.

⁷ See *Numbering Resource Optimization*, Second Report and Order, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 16 FCC Rcd 306 (rel. Dec. 29, 2000) ("*Second Report and Order*"); 47 C.F.R. § 52.15(h).

⁸ *Id.*

⁹ See *Central Office Code (NNX) Assignment Guidelines*, INC 95-0407-008 (rev. Jan. 8, 2001) at § 6.1.2.

In anticipation of Leap's launch of service in the Phoenix rate center, NANPA has assigned it three central office codes in each of 602, 480 and 623 NPAs – for a total allocation of 90,000 numbers. This represents less than _____ of the estimated population covered by Leap's buildout in the BTA.¹⁰ As detailed in the attached Declaration of Matthew P. Stoiber, General Manager of Leap's Phoenix market, Leap has undertaken extensive preparations in anticipation of launch in Phoenix.¹¹ Consistent with its experience in other markets, Leap expects to reach _____ market penetration _____ within _____ of launch.¹² This rate of penetration will rapidly deplete Leap's inventory of 90,000 numbering resources across the Phoenix rate center.

But Leap will exhaust its numbering resources in the 602 and 480 NPAs even more rapidly.¹³ The 602 and 480 NPAs together contain over 83% of the covered population of the entire BTA.¹⁴ Leap specifically expects to utilize 602 and 480 numbers at a faster rate than all Phoenix numbers as a group because population is denser in the 602 and 480 NPAs. As a result of the expected strong demand for these 602 and 480 numbers, Leap expects to exhaust its allocation of 602 and 480 NPA numbering resources within _____ after launch.¹⁵

However, the problem is not limited to only the 602 and 480 NPAs. Unless relief is granted, consumers throughout the Phoenix BTA will be impacted by the reality of rate center-wide exhaustion of numbering resources. Leap anticipates reaching the required 60% utilization

¹⁰ Leap estimates a covered population of _____.

¹¹ See Declaration ¶ 3.

¹² See Declaration ¶ 6-7.

¹³ See Declaration ¶ 13.

¹⁴ The 480 NPA covered population is _____ and the 602 NPA covered population is _____.

¹⁵ See Declaration ¶ 13. As a result, consumers in the 602 and 480 NPAs will be compelled to accept a number with a different area code designation or delay their acquisition of service. Leap wishes to avoid forcing this choice upon 602 and 480 NPA consumers.

threshold across the Phoenix rate center in . following the launch of service.¹⁶ This date is roughly before Leap expects to exhaust its entire remaining allocation of numbering resources.¹⁷ Assuming Leap submits an application for additional numbers immediately upon reaching the 60% threshold, it still must wait an additional 66 days (or more) before the codes are activated. As a result, Leap expects to exhaust its entire rate center-wide allocation of numbers before receiving any new numbering resources.

Therefore, Leap will be without numbers across the entire rate center for nearly one month. And the situation will be worse in the 602 and 480 NPAs, where Leap expects to deplete its allocation of numbers even earlier. Once Leap runs out of numbers, it will be unable to activate phones for use by new subscribers: Phoenix consumers will be denied the very service that the Commission is charged with promoting. Leap estimates approximately 18,500 consumers would have otherwise signed up for Cricket service during the period after it exhausts its number allocation, but before it receives new numbers.¹⁸

¹⁶ See Declaration ¶ 10.

¹⁷ See Declaration ¶ 6.

¹⁸ See Declaration ¶ 14.

III. WAIVER IS APPROPRIATE UNDER THESE CIRCUMSTANCES

A. The Commission Has Discretion to Waive Its Rules

Waiver of the Commission's rules is appropriate when a party establishes that either (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁹ The Commission may also grant a waiver of its rules in cases where special circumstances warrant a deviation from the general rule and where such deviation serves the public interest or where there is good cause to do so.²⁰ In this case, it is plain that waiver of the numbering utilization threshold would serve the public interest.

B. Waivers Are Appropriate to Ensure That Adequate Numbering Resources Are Made Available

The purpose of the utilization threshold is to permit NANPA to verify a carrier's need for growth numbering resources.²¹ However, the Commission is aware that "certain conditions may prevent carriers from meeting the rate-center based utilization threshold when they actually need additional numbers"²² For this reason, the Commission has specifically provided that "carriers that cannot meet the requirements for receiving growth numbering

¹⁹ See 47 C.F.R. §§ 24.843 and 1.925.

²⁰ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). See also 47 C.F.R. § 1.3.

²¹ See *First Report and Order*, 15 FCC Rcd at 7616 ¶ 103.

²² *Numbering Resource Optimization*, Second Report and Order, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 16 FCC Rcd 306, 381 ¶ 188 (rel. Dec. 29, 2000) ("*Second Report and Order*").

resources, but can demonstrate an actual need for additional numbering resources, may seek a waiver of [the Commission's] rules."²³

To be sure, telephone numbers are a scarce resource. The Commission has adopted strict rules to conserve that resource in order that adequate numbers are available to carriers who genuinely need them. But the Commission has also recognized that numbers must be made available in cases of genuine need.²⁴ Indeed, that is the purpose of number conservation: to ensure that numbers are available when and where they are needed.²⁵ Likewise, in its cases the Commission has always recognized that public interest dictates that a carrier should have access to the numbering resources that are necessary to serve its customers.²⁶

For example, the Commission ordered NANPA to release additional codes to American Cellular Corporation ("ACC") when that carrier demonstrated it would "be completely without numbers . . . within the 66 day period required to activate a central office code" for fear that if ACC did obtain additional numbering resources "very soon," it might be unable to provide service to new customers.²⁷ The Commission also ordered NANPA to release additional growth

²³ See *id.* at 380 ¶ 186. Moving forward, the Commission has also sought comment on the efficacy of an explicit "safety valve" that would allow a carrier to obtain needed numbering resources where they cannot otherwise meet the utilization requirement. See *id.* at 381 ¶ 188. Leap believes the present situation argues for the enactment of a mechanism that would permit a rapid growth carrier such as Leap to obtain the numbering resources needed to meet its short-term demand forecasts. However, Leap's situation cannot wait for the resolution of this rulemaking process.

²⁴ See *Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717*, Memorandum Opinion and Order and Order on Reconsideration, 13 FCC Rcd 19009, 19039 ¶ 49 (rel. Sept. 1998) ("*Pennsylvania Order*").

²⁵ See *First Report and Order*, 15 FCC Rcd at 7611 ¶ 88 (explaining "it has become necessary to adopt policies to ensure to that carriers request and receive numbering resources only when and where needed").

²⁶ See *e.g.* Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau to Ronald R. Conners, Director, North American Numbering Plan Administration, dated June 6, 2000 (DA 00-1247) ("*June 6 Letter*"); Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau to Ronald R. Conners, Director, North American Numbering Plan Administration, dated April 7, 1999 (DA 99-663) ("*April 7 Letter*"); Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau to Ronald R. Conners, Director, North American Numbering Plan Administration, dated March 12, 1999 (DA 99-505) ("*March 12 Letter*").

²⁷ See *April 7 Letter*.

codes to Sprint PCS under similar facts and for the identical reason: to avoid forcing the carrier to discontinue offering service to new customers in that NPA.²⁸ Likewise, the Commission ordered NANPA to release an initial central office codes to AT&T Wireless outside the assignment schedule when to do otherwise would render that carrier “unable to commence serving customers on schedule.”²⁹ Indeed, the Commission’s primary concern is that numbering rules “not be applied in such a manner as to deprive customers of their choice of carriers from whom to purchase service upon request.”³⁰ Moreover, the Commission has repeatedly acknowledged that, “[f]or competition to continue to develop, all carriers must have access to numbering resources.”³¹ These policy concerns apply with equal or greater force here.

C. Leap Should Be Granted a Waiver Under These Circumstances

The Commission’s rules prevent Leap from requesting additional growth codes until a month before it will run out, yet it will take NANPA at least two months to assign the new numbers. There is no question that without a waiver, Leap will run out of numbers in the Phoenix market. Leap’s projected growth rate in the market is commensurate with its past experience in multiple markets. Clearly, this is not a case of unverifiable need. Like ACC and Sprint PCS, Leap *requires* additional numbering resources to prevent an interruption in its offering of services.

Waiver of the utilization threshold in this instance will serve the public interest by preventing an interruption of Leap’s offering of service to consumers in the Phoenix rate center. Otherwise, Leap will be forced to wait until it reaches the 60% threshold to request additional

²⁸ See *March 12 Letter*.

²⁹ See *June 6 Letter*.

³⁰ *In the Matter of New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures*, Order, 14 FCC Rcd 17467, 17479 ¶ 26.

³¹ *June 6 Letter* (citing *Pennsylvania Order*, 13 FCC Rcd at 19033 ¶ 38).

numbers. Similar to ACC and Sprint PCS who both faced imminent exhaustion of numbering resources, projections clearly indicate that once Leap reaches the 60% threshold, consumer demand will deplete the remaining supply of numbers within the 66 day period necessary to activate the new numbers.³² Without the instant waiver then, Leap will be forced to discontinue activations until it receives these additional numbering resources.

During the time between the depletion of its initial allocation of numbers and the receipt of additional numbering resources, Leap estimates that consumers in the Phoenix rate center would otherwise sign up for Cricket service.³³ Denial of this petition, then, would effectively deny these consumers the opportunity to avail themselves of the benefits of the Cricket service. This justification for a waiver is particularly compelling in the case of a market entrant such as Leap that targets its offerings to both existing wireless subscribers and those consumers who, but for Leap, might not otherwise obtain wireless services. Leap specifically requires three central office codes in the 602 NPA and three central office codes in the 480 NPA.

The allocation of these six additional of central office codes will raise Leap's rate center-wide allocation to 150,000 numbering resources. Furthermore, by allocating an additional three central office codes in each of the 602 and 480 NPAs, the Commission would raise the share of numbering resources in each of these NPAs to 40% of the its rate center-wide allocation. This share of numbering resources is much closer in line to the 41% and 43% share of the population residing in the 602 and 480 NPAs respectively.

³² See Declaration ¶ 12.

³³ See Declaration ¶ 14.

It is necessary for Leap to receive six codes so that it will not run out of numbers prior to receiving growth codes allocated by NANPA through the standard application process. If granted the relief sought in this petition, Leap expects to reach the 60% threshold (90,000 customers) in _____ time, but does not expect to exhaust its numbering resources until _____ after launch.³⁴ The interim time period should therefore be sufficient to activate any additional codes requested from NANPA upon reaching 60% utilization _____ after launch.

Leap further requests the Commission order NANPA to assign these codes by August 3, 2001. This date is _____ before Leap expects to exhaust in numbers in the 480 NPA and _____ before Leap expects to exhaust its numbers in the 602 NPA. Action by August 3, 2001 will allow Leap to bolster its allocation numbering resources in the densely populated 602 and 480 NPAs and will diminish the effect of disproportionate demand for 602 NPA and 480 that would otherwise result in the earlier exhaustion of numbering resources in those NPAs. Action by this date will also reduce the likelihood that Leap will exhaust its entire rate center-wide

³⁴ See Declaration ¶ 8.

allocation of numbering resources. By ordering NANPA to assign the growth codes by August

3, 2001, the Commission will prevent Leap from discontinuing activations while it waits for its growth codes to become effective.

IV. CONCLUSION

For the reasons discussed above, and as set forth in the Declaration, Leap respectfully requests that the Commission waive Section 52.15(h) of the Commission's Rules and order NANPA to immediately assign to Leap three growth codes in the 602 NPA and three growth codes in the 480 NPA. A grant of this request will serve the public interest by allowing a carrier with verifiable need to obtain the growth numbering resources that will allow it to serve consumers in the Phoenix market.

Respectfully submitted,

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